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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,045	05/15/2001	Maria Raidel	29226-1PCT/US/ KC13,065.1	2567

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,045

Applicant(s)

RAIDEL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40 – 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 40 recites the limitation "said at least one sheet" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 41 recites the limitation "the undulating strip of material" in line 1. There is insufficient antecedent basis for this limitation in the claim.

With regard to claim 42, "UCTAD" should be replaced with the full descriptive phrase for which it is an acronym.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36 – 40, 43 – 49, 54 – 56 and 58 – 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Chappell et al. (H1511).

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As to claim 36, Chappell et al. (hereinafter "Chappell") discloses an absorbent article having a front area and a rear area, and a central area between the front and rear areas, said absorbent article comprising a liquid-permeable layer (22), a liquid-impermeable layer (23), a liquid distribution layer (21) disposed between the liquid-permeable layer and the liquid-impermeable layer, and extending between the front area and the rear area, said liquid distribution layer comprising at least one web of sheet material (col. 11, lines 49 – 52) said at least one web of sheet material having openings therein formed after fabrication of the respective web of sheet material (col. 8, lines 46 – 56 and col. 11, lines 52 – 55) and a liquid storage layer between the liquid-impermeable layer and the liquid distribution layer (24), said liquid distribution layer transferring fluid to at least part of the liquid storage layer located in one or both the front area and the rear area of the absorbent article as set forth in col. 12, lines 12 – 4.

Chappell specifically discloses the openings being formed in the web after fabrication of the sheet material through the incorporation of Buenger et al. (US 5,334,176). Buenger et al. (hereinafter "Buenger") teaches that openings may be formed in sheet material after fabrication as set forth in col. 11, lines 3 – 20.

With reference to claim 37, see Buenger, col. 11, lines 3 – 20.

As to claim 38, see Chappell, col. 8, lines 5 – 18.

Regarding claim 39, Chappell discloses an article wherein the liquid distribution layer comprises undulations arranged so as to form transport channels extending along the longitudinal direction of the absorbent article as set forth in col. 8, lines 20 – 32.

With respect to claim 40, Chappell discloses an absorbent article wherein the liquid distribution layer comprises an undulating strip of material (27) connected to said at least on sheet which bears the openings as set forth in col. 8, lines 28 – 32, col. 11, lines 49 – 52 and figure 2.

With reference to claims 43 and 54, Chappell discloses a liquid storage layer which extends from the rear area to the front area of the absorbent article and that the construction may have varying liquid retention abilities as set forth in col. 6, lines 39 – 51. Additionally, the applicant has not defined the size of the central area in comparison with the front and rear areas. A larger front and/or rear area alone or combined in comparison with the central area of a uniformly absorbent material would inherently retain more liquid than the smaller central area.

Regarding claims 44 – 45 and 55, the liquid distribution layer and the liquid storage area of Chappell would be brought in contact with one another via compression when in use and because of the structure of the liquid distribution layer, the contact between the two layers would be in contact in a point-like manner.

As to claims 46 and 47, Chappell discloses an absorbent article wherein the liquid distribution layer is in contact with the liquid storage layer via hydrophilic adhesive as set forth in col. 12, line 48 to col. 13, line 24 and due to the structure of Chappell's pleated distribution layer, the adhesive would connect the two layers in a point-like manner.

With respect to claims 48 and 56, Chappell discloses an absorbent article wherein the openings in the liquid distribution layer comprise funnel-shaped openings for transferring fluid, such funnel-shaped openings tapering inwardly toward the liquid storage layer as set forth in col. 8, lines 39 – 56 and figure 7A.

Regarding claim 49, see the rejection of claim 1.

With reference to claim 58, see col. 2, lines 33 – 55 and figures 1 and 9 – 10.

With respect to claim 59, see col. 2, lines 23 – 26.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chappell as applied to claims above, and further in view of Muhs et al. (US 6,011,195).

Chappell does not disclose the use of an UCTAD material for the at least one web. Muhs et al. (hereinafter "Muhs") teaches the use of such materials in feminine hygiene structures. Furthermore, the applicant's specification does not state the limitations of an UCTAD material that solves any particular problem or produces any unexpected results, therefore, the examiner contends that the choice of an UCTAD

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material is merely a matter of engineering design choice that does not serve to patentably distinguish the claimed invention over the prior art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 36 – 65 are rejected under the judicially created doctrine of double patenting over claims 1 – 4 and 6 – 45 of U. S. Patent No. 6,241,714 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both the instant application and U.S. Patent No. 6,241,714 are directed to an absorbent article with a liquid distribution layer disposed between a liquid-permeable layer and a liquid-impermeable layer wherein the liquid distribution layer comprises an undulating strip of material and discrete passages or opening which may have tapering feet at the bottom of the opening therein with a liquid

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storage layer located between the liquid-impermeable layer and the liquid distribution layer

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl, can be reached on 703-308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
May 7, 2002

John G. Weiss

John G. Weiss
Supervisory Patent Examiner
Group 3700